

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

3 JUL 20 2007
at 3 o'clock and 31/12/07
SUE BEITIA, CLERK

Attorneys for Petitioner
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

C.V. 07-00385 HG BMK

| | | |
|---------------------------|---|-------------------------------|
| UNITED STATES OF AMERICA, |) | CIV. NO. |
| |) | (Crim. No. 01-00380 HG) |
| Petitioner, |) | |
| |) | NOTICE OF CERTIFICATION THAT |
| vs. |) | RESPONDENT IS A SEXUALLY |
| |) | DANGEROUS PERSON, AND REQUEST |
| JAY ABREGANA, |) | FOR HEARING PURSUANT TO |
| |) | 18 U.S.C. § 4248(A); EXHIBIT |
| Respondent. |) | "A"; CERTIFICATE OF SERVICE |
| |) | |

NOTICE OF CERTIFICATION THAT RESPONDENT
IS A SEXUALLY DANGEROUS PERSON, AND REQUEST
FOR HEARING PURSUANT TO 18 U.S.C. § 4248(A)

The United States hereby gives notice that Jay Abregana ("Abregana"), the defendant in United States v. Abregana, Cr. No. 01-00380 HG, and presently an inmate at the Federal Detention Center in Honolulu, Hawaii (Register Number 88234-022), has been certified to be a "sexually dangerous person" pursuant to the Adam Walsh Child Protection and Safety Act, Pub. L. No. 109-248, Title III, § 302(4), 120 Stat. 620 (July 27, 2006), codified at 18 U.S.C. § 4248(a). The United States further moves this court

for a hearing to determine whether Abregana is a "sexually dangerous person" subject to civil commitment for treatment in an appropriate facility.

The United States initiates these civil commitment proceedings pursuant to 18 U.S.C. § 4248(a), which provides as follows:

In relation to a person who is in the custody of the Bureau of Prisons ... the Attorney General or any individual authorized by the Attorney General or the Director of Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government[.] The court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

The term "sexually dangerous person" is defined in 18 U.S.C. § 4247(a)(5) to mean "a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others." Under 18 U.S.C. § 4247(a)(6), a person is considered "sexually dangerous to others" if he "suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released."

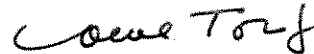
On July 20, 2007, Anthony A. Jimenez, chairperson of the Federal Bureau of Prisons (BOP) Certification Review Panel in Washington D.C., certified that Abregana is a sexually dangerous person within the meaning of the foregoing statutes. A copy of Mr. Jimenez's certification is attached as Exhibit "A." As noted in the certification, the director of the BOP has delegated to Mr. Jimenez the authority to certify persons as sexually dangerous. Mr. Jimenez has certified Abregana as meeting the statutory criteria based on his past criminal conduct, the conduct giving rise to revocations of two prior terms of supervised release, a limited psychological review which resulted in a diagnosis of pedophilia, and an initial actuarial risk assessment of the likelihood that he would reoffend.

The United States asks this court to schedule a hearing under 18 U.S.C. § 4248(a) to determine whether Abregana is subject to the commitment to the custody of the Attorney General for treatment in a suitable facility, in accordance with the provisions of 18 U.S.C. § 4248(d). As a result of the filing of the certification, the BOP will retain custody of Abregana pending the completion of such proceedings. See 18 U.S.C. § 4248(a). A copy of this notice and request for hearing will be

served upon the Federal Public Defender's Office, counsel for Abregana in the underlying criminal proceedings.

Dated: Honolulu, Hawaii, July 20, 2007.

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

A handwritten signature in cursive script, appearing to read "Lawrence L. Tong", written in dark ink.

LAWRENCE L. TONG
Assistant U.S. Attorney

CERTIFICATION OF A SEXUALLY DANGEROUS PERSON

(1) I, Anthony A. Jimenez, am Chairperson of the Federal Bureau of Prisons (Bureau) Certification Review Panel, Washington, D.C. Pursuant to 28 C.F.R. § 0.97, the Director of the Bureau has delegated to me the authority to certify persons in Bureau custody as sexually dangerous, as authorized by 18 U.S.C. § 4248(a).

(2) Bureau records reflect the following: Inmate Jay Abregana, Register Number 88234-022, is in Bureau custody at the Federal Detention Center, Honolulu, Hawaii, serving a supervised release violator term of four months. Inmate Abregana's original sentence was a 44-month term of imprisonment and 3 years supervised release, following his conviction for Transporting in Child Pornography, in violation of 18 U.S.C. § 2252(a)(1) (D. Hawaii) (Case No. 1:01CR00380-001). His offense conduct included using the Internet and U.S. Mail to transmit images of child pornography, and possessing 13 images of himself and a 15-year-old boy engaging in oral sex. Inmate Abregana first violated supervised release in June 2005 by having sexual contact with a 17-year-old male, failing to report for sex offender treatment, using drugs, and failing to comply with drug testing. In March 2007, Inmate Abregana again violated the terms of supervised release by refusing to comply with drug testing and using a

computer to access pornography, and contact 3 boys, ages 10, 12, and 14. His projected release date is July 20, 2007.

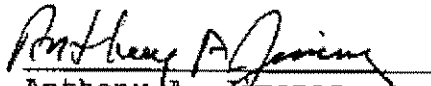
(3) Based on a review of his Bureau records, I certify he is a sexually dangerous person as defined by 18 U.S.C. § 4247(a)(5), and sexually dangerous to others as defined by 18 U.S.C. § 4247(a)(6). My certification is based on information found in Bureau records which includes, but is not limited to, the following:

(a) He previously engaged or attempted to engage in sexually violent conduct or child molestation as evidenced by his current offense conduct and his conduct while on supervision;

(b) A limited psychological review indicated the following: Axis I diagnosis of Pedophilia, Sexually Attracted to Both Males and Females, Nonexclusive Type; and Axis II diagnosis of Histrionic Personality Disorder(Rule Out Borderline Personality Disorder);

(c) An initial assessment of him using two actuarial risk assessment instruments (Static-99 and Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR)) was conducted. These results, in addition to his current and prior offense conduct, failure in sex offender treatment, and repeated violations of supervised release, indicate he will have serious difficulty refraining from sexually violent conduct or child molestation if released.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.



Anthony A. Jimenez
Chairperson
Certification Review Panel
Federal Bureau of Prisons

7/20/07
Date

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served by hand delivery:

PAMELA BYRNE, AFD
Federal Public Defender
300 Ala Moana Blvd, Suite 7-104
Honolulu, Hawaii 96850-5269

July 20, 2007

Attorney for Defendant
JAY ABREGANA

DATED: July 20, 2007, at Honolulu, Hawaii.

Jamie Karmali